



Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Concluding observations on the combined fourth and fifth periodic reports of Croatia*

1. The Committee against Torture considered the combined fourth and fifth periodic reports of Croatia (CAT/C/HRV/4-5) at its 1266th and 1269th meetings, held on 13 and 14 November 2014 (see CAT/C/SR.1266 and CAT/C/SR.1269), and adopted the following concluding observations at its 1285th meeting, held on 26 November 2014.

A. Introduction

2. The Committee expresses its appreciation to the State party for accepting the optional reporting procedure, as this improves the cooperation between the State party and the Committee. It notes, however, that the State party submitted the report, which was due in 2008, only in March 2013.

3. The Committee also appreciates the high-level delegation of the State party, as well as the additional oral and written information provided by the representatives of the State party to questions raised and concerns expressed during the consideration of the report.

B. Positive aspects

4. The Committee welcomes the entry into force of, and amendments to, national legislation, including:

- (a) The Criminal Code, in 2013;
- (b) The Act on the Ombudsman, in 2011;
- (c) The Act on National Preventive Mechanisms for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in 2011;
- (d) The Law on Protection of Persons with Mental Disorders, which will come into force in 2015;
- (e) The Law on Protection against Domestic Violence in 2003;
- (f) The amendments to the Asylum Act, in 2013;

* Adopted by the Committee at its fifty-third session (3–28 November 2014).



- (g) The amendments to the Aliens Act, in 2013;
- (h) The Act on Free Legal Aid, in 2014.

5. The Committee also welcomes the State party's adoption of: the Migration Policy of the Republic of Croatia for the Period 2013–2015; the National Programme for Protection and Promotion of Human Rights for the Period 2013–2016; the National Strategy for Roma Inclusion 2013–2020 and the accompanying action plan (2013–2015) for implementation of the Strategy; and the National Plan for the Prevention of Trafficking in Persons for 2012–2015.

C. Principal subjects of concern and recommendations

Fundamental legal safeguards against torture and ill-treatment of persons deprived of their liberty

6. The Committee welcomes the inclusion of fundamental legal safeguards against torture and ill-treatment of persons deprived of their liberty in the State party's legislation, and also welcomes the reduction of the pretrial detention period. However, the Committee expresses its concern at the State party's failure in practice to afford all persons deprived of their liberty all fundamental legal safeguards from the very outset of detention. The Committee is concerned over reports: (a) on the existing practice of summoning persons to the police station and engaging them in "informative talks" for several hours before formally declaring them criminal suspects and before allowing them to contact a lawyer; (b) that detainees do not have the right to have access to a doctor of their own choice; (c) that medical examinations of detainees have been conducted in the presence of police officers; (d) that some detainees have not been allowed to inform family members of their detention; (e) that detention on remand during pretrial proceedings appears to be the norm rather than the exception in the judicial practice of the State party's courts; (f) that individuals in pretrial detention have been detained with convicted prisoners; and (g) that individuals accused of crimes have been evaluated as posing a danger to themselves or others, transferred to different psychiatric hospitals for forensic evaluation and held for months pending evaluation (arts. 1, 4, 12, 13, 15, 16).

The State party should immediately adopt measures to ensure in law and in practice that every person deprived of his or her liberty is afforded legal safeguards against torture from the outset of detention. The State party should ensure that:

- (a) All individuals deprived of their liberty: have prompt and unimpeded access to an independent lawyer of their choice; obtain, on their request, immediate access to an independent medical examination; and may contact a family member;**
- (b) Any public official who denies fundamental legal safeguards to persons deprived of their liberty is disciplined or prosecuted; it should also provide data to the Committee on the number of cases in which public officials have been disciplined for such conduct;**
- (c) The judiciary and the prosecution, whenever appropriate, promote less restrictive alternatives to detention;**
- (d) All medical examinations of persons in police custody are conducted by independent medical practitioners and out of the sight and hearing of law enforcement officials;**
- (e) Individuals in pretrial detention are kept separately from convicted prisoners;**

(f) **The system for psychiatric evaluation of detainees is reviewed to ensure that when detainees are placed in psychiatric establishments for forensic evaluations, they are provided with fundamental safeguards against torture and that the evaluations are conducted as expeditiously as possible.**

Evidence obtained through torture

7. While the Committee is not aware of any reports of evidence obtained through torture having been used in criminal proceedings, it would like to receive information on all cases in which judges have sought investigations into allegations made by defendants that they had confessed to a crime as a result of torture (art. 15).

The State party should provide the Committee with information on whether judges are mandated by law to initiate an investigation when provided with prima facie evidence of torture; on cases in which confessions were deemed inadmissible on the grounds that they had been obtained through torture; and on whether any officials have been prosecuted and punished for extracting such confessions.

Investigation of torture and ill-treatment

8. The Committee is concerned at the lack of detailed information regarding the number of complaints received during the reporting period alleging torture and ill-treatment by law enforcement and other public officials, the number of such complaints investigated by the State party, any prosecutions brought and any resulting convictions and sentences. The Committee is also concerned at reports of ill-treatment of persons belonging to ethnic minorities and lesbian, gay, bisexual and transsexual persons, both by law enforcement officials and private individuals.

The Committee stresses that all alleged acts of torture or ill-treatment, including verbal abuse and use of excessive force by law enforcement officials, should be subject to investigation. The State party should systematically collect disaggregated data on: the number of complaints received alleging torture and ill-treatment by law enforcement and other public officials, including of lesbian, gay, bisexual and transsexual persons and persons belonging to ethnic minorities; the number of cases investigated by the State party; any prosecutions brought; any resulting convictions and sentences; and all cases in which officials were subjected to disciplinary measures for failure to investigate complaints of torture or ill-treatment adequately or for refusal to cooperate in investigating any such complaint (arts. 12, 13 and 16).

Independent complaints mechanism

9. While welcoming the State party's efforts to investigate allegations of torture and ill-treatment by police officers, the Committee is concerned that such allegations continue to be referred for preliminary investigation to the Internal Control Department, which is a department within the same structure employing the alleged perpetrators. The Committee is concerned that the Department has not been fully independent and effective in combating torture and ill-treatment (art. 13).

The State party should ensure in law and in practice that every person has the right to complain of torture or ill-treatment to an effective and fully independent mechanism that will investigate and respond promptly.

Independent monitoring of places of deprivation of liberty

10. While the Committee welcomes the efforts of the Office of the Ombudsman, which also performs the function of a national preventive mechanism, the Committee is concerned at information it has received indicating the insufficient independent and regular monitoring

of the places of deprivation of liberty. The Committee is concerned over reports of insufficient and decreasing funding for the recently established national preventive mechanism, limited human and financial resources for the Office of the Ombudsman and the lack of implementation of its recommendations (arts. 2, 11, 12, 13).

The Committee urges the State party to strengthen the independent monitoring of places of deprivation of liberty via a national preventive mechanism that effectively and regularly monitors and inspects all places of detention without prior notice, reports publicly on its findings, and raises with the authorities situations of detention conditions or conduct amounting to torture or ill-treatment. The State party should provide the necessary human and financial resources to ensure the independent and effective operation of the Office of the Ombudsman and the national preventive mechanism. The State party should also cooperate with civil society organizations to allow them to conduct independent monitoring of places of deprivation of liberty. The State party should ensure that the recommendations of the monitoring bodies are considered with respect to implementation.

War crimes prosecutions and amnesties for torture

11. While welcoming the information that the prosecution of acts of torture is not limited by a statute of limitations, the Committee is concerned that among the 22,326 persons that were granted amnesty pursuant to the Act on Amnesty from Criminal Prosecution and Proceedings in Respect of Criminal Offences Committed during the Armed Conflicts and the War against the Republic of Croatia, the amendments to that Act, the General Amnesty Act and the decisions issued by the President of Croatia granting pardon, a number of individuals may have benefited from amnesties for acts of torture. The Committee further regrets that the State party has not presented information regarding its sentencing policies for war crimes, and is concerned over reports that a significant number of prosecutions for war crimes had been conducted in absentia, predominantly against defendants of Serb ethnicity, and that the latter had been convicted to much higher sentences than members of the Croatian military under the same charges. The Committee is particularly concerned over reports that to date only one final conviction for war crimes perpetrated during “Operation Storm” had been handed down (arts. 1, 4 and 12).

The State party should ensure that all persons, including senior police officials, military personnel and political officials, suspected of complicity in and perpetration of war crimes and crimes against humanity are brought to justice. The State party should abolish the practice of granting amnesties to persons convicted of torture or ill-treatment, as outlined by the Committee in its general comments No. 2 (2007) on the implementation of article 2 by States parties and No. 3 (2012) on the implementation of article 14 by States parties, in which the Committee affirmed that amnesties for the crime of torture are incompatible with the obligations of States parties.

Conditions of detention

12. While the Committee takes note of the State party’s efforts in increasing the capacity of prisons and the decrease in the number of prisoners in the State party’s correctional institutions, it is concerned at the reports of very high occupancy rates in high security wards (for example, around 200 per cent in the Osijek County Prison). The Committee also remains concerned regarding the conditions of detention in the prisons, in particular in the Zagreb County Prison, where reportedly prisoners spend up to 22 hours per day in their cells and their opportunities to work or engage in other activities are extremely limited. The Committee is also concerned over reports of the deplorable material conditions in psychiatric institutions and in the detention facility for foreigners in Ježevo (arts. 2, 11 and 16).

The State party should pursue its efforts to combat prison overcrowding, in particular in high security wards. It should also take steps to improve the material conditions in the prisons, in psychiatric institutions and in the detention facility for foreigners.

Women and juveniles in detention

13. The Committee is concerned that there is only one prison for females in the State party and that it is located in a remote geographic location, which makes family visits difficult, in particular for families with small children. The Committee is also concerned that, although the domestic legislation prescribes that juveniles convicted of crimes shall be placed in a separate enclosed institutional facility, such a facility has not been established and juvenile convicts are placed in prisons (arts. 1 and 16).

The State party should take steps to provide more correctional facilities for female prisoners to ensure that they have reasonable opportunity to maintain relations with their families, in particular if they have minor children. The State party should establish a separate enclosed facility for juvenile convicts.

Redress for victims of torture

14. The Committee is concerned that, according to the information from the State party, the State party has not provided any compensation to victims of torture in the reporting period. It is also concerned at the lack of specific examples of cases in which victims of torture received medical/psychosocial rehabilitation (art. 14).

The State party should provide to victims of torture redress, including compensation and the means for as full rehabilitation as possible, in law and in practice. The Committee draws the attention of the State party to its general comment No. 3, in which the Committee explained the content and scope of the obligations of States parties to provide full redress to victims of torture, and recommends amending the domestic legislation accordingly.

Situation of refugees and non-refoulement

15. The Committee is concerned that: (a) asylum seekers are detained in the detention facility in Jezevo together with illegal migrants, some for extended periods of time; (b) there is a lack of provisions for medical treatment, outside of emergency treatment, and for psychological counselling for asylum seekers; (c) there is no information regarding mechanisms for early identification of victims of torture and other persons with specific needs among asylum seekers; and (d) free legal aid is not provided in procedures related to the decision on detention, neither to asylum seekers nor to irregular migrants; (e) the information provided by the State party regarding its extradition and expulsion proceedings and their compliance with the non-refoulement obligation under article 3 of the Convention is insufficient (arts. 1, 3, 4, 12, 13, 15, 16).

The State party should place asylum seekers in detention only in exceptional cases and should regularly monitor the facilities used as accommodation for asylum seekers through the national preventive mechanism or other monitoring mechanisms. The State party should: (a) provide medical treatment and psychological counselling for asylum seekers; (b) ensure the early identification of victims of torture and other persons with specific needs among asylum seekers through the implementation of appropriate national protection mechanisms; (c) establish a mechanism that will provide access to counselling, treatment and rehabilitation for victims of torture, and any specific accommodations necessary during refugee status determination procedures; (d) ensure that free legal aid is provided to asylum seekers and migrants in procedures related to the decision on detention; and (e) provide the Committee with

detailed information regarding its extradition and expulsion proceedings and their compliance with the non-refoulement obligation under article 3 of the Convention.

Implementation of legislation regarding violence against women

16. While the Committee welcomes the adoption of the Law on Protection against Domestic Violence and the measures taken for the protection of victims, it is concerned over reports that when police respond to domestic violence, they at times arrest and even charge the victim along with the perpetrator, that police officers are not adequately trained to respond to domestic violence calls, and that misdemeanor judges who preside over these charges are also poorly equipped to identify the predominant aggressor and have found domestic violence victims guilty of offences under the above-mentioned law. The Committee is further concerned at reports that there are not enough adequate facilities available for women victims of such violence in the State party (arts. 2, 12, 13, 14 and 16).

The State party should ensure that mechanisms are in place to encourage women victims of violence to come forward, that all allegations of violence are promptly, thoroughly and effectively investigated, that perpetrators are held accountable, and that women victims of violence obtain adequate redress, including compensation and rehabilitation. The State party should provide further specific training for police officers and for misdemeanour judges on handling domestic violence cases.

Situation of individuals in psychiatric establishments, use of restraint

17. The Committee welcomes the adoption of the Law on Protection of Persons with Mental Disorders, but remains concerned over reports of continued use of different means of physical restraint in psychiatric institutions, including leather or canvas straps fastened with buckles or magnetic locks employed to attach patients to beds, and straightjackets, often by personnel who are not specifically trained to apply restraint measures to psychiatric patients and without clear therapeutic purpose, as well as over reports of the use of seclusion.

The Committee recommends that: means of restraint should be used only as a last resort to prevent the risk of harm to the individual or others and only when all other reasonable options would fail to satisfactorily contain that risk; the staff of psychiatric establishments should receive appropriate training; any resort to means of restraint should always be either expressly ordered by a doctor or immediately brought to the attention of a doctor; and the application of means of restraint should be for the shortest possible time.

Training of personnel

18. The Committee takes note of the State party's information regarding training and workshops for law enforcement, prison and other officials and medical personnel serving in the correctional system. It regrets that the State party did not provide information on gender-specific training, and notes a lack of information on how the State party assesses the effectiveness of the above training (art. 10).

The State party should provide gender-specific training to medical personnel dealing with detainees, in particular in pretrial detention facilities, on the identification of signs of torture and ill-treatment pursuant to the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules). The State party should develop and implement a

methodology to assess the effectiveness and impact of its training/education on cases of torture and ill-treatment.

Other issues

19. The Committee invites the State party to ratify the core United Nations human rights treaties to which it is not yet a party, namely, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families and the International Convention for the Protection of All Persons from Enforced Disappearance.

20. The State party is requested to disseminate widely the report submitted to the Committee and the Committee's concluding observations, in the appropriate languages, through official websites, the media and non-governmental organizations.

21. The Committee requests the State party to provide, by 28 November 2015, follow-up information in response to the Committee's recommendations relating to steps taken (a) to ensure that all individuals deprived of their liberty have prompt and unimpeded access to an independent lawyer of their choice and to an independent medical examination, and that they may contact a family member, (b) to provide for effective independent monitoring of places of deprivation of liberty by the national preventive mechanism and civil society and (c) to provide training to medical personnel dealing with detainees on the identification of signs of torture and ill-treatment, as contained in paragraphs 6 (a), 10 and 18 of the present document.

22. The State party is invited to submit its next report, which will be the sixth periodic report, by 28 November 2018. To that purpose, the Committee will, in due course, transmit to the State party a list of issues prior to reporting, considering that the State party has accepted to report to the Committee under the optional reporting procedure.
